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Joint written statement* submitted by the International Catholic Child Bureau, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

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* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

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Impact of Domestic Violence on Children and Child Abuse and Neglect in Ukraine

1. Domestic Violence[1] and Impact on Women and Children

1.1. Persistent Domestic Violence and Consequences

1. Despite a quite comprehensive national legislation[2], during the last decade, UN experts, monitoring mechanisms and treaty bodies, including the Committee on the Rights of the Child, expressed concerns over the domestic violence situation in Ukraine. Hence, the Special Rapporteur on the sale of children, child prostitution and child pornography in October 2006[3], the CEDAW in January 2010[4], the CRC in January 2011[5], the Universal Periodic Mechanism in May 2008[6] and October 2012[7], and the Human Rights Committee in July 2013[8], consistently underlined the magnitude and the consequences of domestic violence on the rights of women and children despite the domestic legislation and steps undertaken by the Ukrainian authorities. Challenges reclined on different aspects, including the indifference vis-à-vis

[1] Domestic violence, i.e. any deliberate physical, psychological, or economic actions (use of physical violence without causing physical pain and bodily injuries, threats, insulting or stalking, deprivation of housing, food, clothes, other property or money to which victim has right given to him by law, etc.) which could or have resulted in damage to physical or mental health of victim, as well as breach of restraining order by person whom this order concerns and failure to attend correctional program by person who committed domestic violence. Regardless the fact that different forms of violence are widely spread in all settings in Ukraine, domestic violence is considered to be the most acute and urgent problem. More than 100'000 cases of domestic violence are registered in Ukraine annually, as reported by the Ministry of Social Policy of Ukraine. In 2012, 110'200 cases of domestic violence have been reported (In 2010: 110'272 cases of domestic violence, including 96,152 reported by women, and 8,683 reported by men; 2011: 126'514 cases of domestic violence, including 113'872 reported by women, and 11'861 reported by men). It is known that about 1'000 women die annually *(http://tyzhden.ua/News/24395)* and 30 per cent of all murders are committed on the ground of domestic background. Despite the fact that any form of violence against children is prohibited by Ukrainian law, around 45 per cent of children interviewed by *Women's consortium of Ukraine* have stated that they face domestic violence *(Annual report of the Parliamentary Commissioner for human rights in Ukraine, 2013/ http://ombudsman.gov.ua/index.php?option=com_content&view=article&id=2729:2013-06-04-14-07 13&catid=232:2013&Itemid=233).* At the same time the level of official reports of such cases remains low. Out of 110'200 cases reported in 2012 to the Ministry of Social Policies of Ukraine, only 708 were communicated by children, while the total estimation of children on the record as victims of child abuse and violence was 1'741 *(Annual report of the Parliamentary Commissioner for Human Rights in Ukraine, 2013).*

[2] The 1996 Constitution of Ukraine (e.g. Art. 52), the Family Code (e.g. Art. 150 (§6, 7), the Law on Child Protection (e.g. Art. 10), and the Law on Education (e.g. Art. 51 §16, and 56) provide for the protection of children against violence. In addition, Ukraine was the first country out of the post-Soviet States to approve a Law on prevention of domestic violence in 2001, amended in 2008. Sanctions against domestic violence perpetrators may include formal warning about impermissibility of committing domestic violence, official registration as a perpetrator of domestic violence, referral to correction programme, etc. The 2001 Law identifies legal and organizational background for prevention of domestic violence as well as responsible agencies. In 2008, the Law was amended with a wider interpretation of the notion of "family member". It also introduced the correction programs for the offenders. The notion of "victim behavior" was withdrawn. In addition, the Ukrainian Domestic Violence (Prevention) Act provided for the protection of the dignity and the rights of children who have parents and live in families and of orphans without parental care and raised in the families of tutors and guardians, or in adoptive families or family-type children's homes, in all cases where violence is enacted against them or where there is a real threat of such violence.

[3] UN Doc. A/HRC/4/31/Add.2.

[4] UN Doc. CEDAW/C/UKR/CO/7, § 26.

[5] UN Doc. CRC/C/UKR/CO/3-4.

[6] UN Doc. A/HRC/8/45.

[7] UN Doc. A/HRC/22/7.

[8] UN Doc. CCPR/C/UKR/CO/7(2013).

the formal warning about impermissibility of committing domestic violence[9], and the imperfect formulation of procedures of enforcing measures against perpetrators[10].

1.2. Prosecution of Persons Guilty of Offence

2. Domestic violence act in Ukraine entails administrative punishment according to Article 173-2 of the Code of Ukraine on Administrative Offences (December 07, 1984). Notwithstanding, in the enforcement process, courts generally tend to impose fines as a punishment whilst such punishment is quite ineffective, especially in situations of low-income families – financial penalty hurts all family members. Vice versa, if a perpetrator is a well-to-do person, he or she would not be much affected by the size of imposed fine. Courts are quite reluctant in using such effective and generally useful type of punishment as public work.

1.3. Regimes and Specifics of Court Functioning

3. It may take a very long time between the offence and actual punishment of a perpetrator. For example, detention of a domestic troublemaker for several days (administrative arrest as established by the law) requires a relevant court decision. Police may hold such perpetrator for only three hours after committing offence; then he returns home and continues threatening his family. Until the court finally decides to detain such person for a longer period of time, he may torment his victims for several more days.

4. Corruption in law enforcement agencies and in the court system is another significant concern. Sometimes, a woman finds it extremely difficult to defend herself in the court or to obtain adequate results of pre-trial investigation, especially if her offender is a rich or important person. In the meantime, if she has children, they continue to suffer consequences of violence occurred[11].

1.4. The System of Responsible Bodies

5. The Ministry of Social Policy is responsible for ensuring assistance, care and protection to female victims of violence. It is provided by the State centres for social and psychological assistance in the majority of oblast centres of Ukraine. As per the end of 2013, 22 of such centres existed in Ukraine. The main goal of such centres is to improve the quality of life and to encourage active life positions of individuals in difficult life circumstances who cannot cope with them independently. This goal is achieved through provision of temporary living quarters and a set of social services[12].

6. The services are also provided by the network of centres of social services for family, children and youth (CSSFCY) – specialized facilities that carry out social work with families, children and youth in difficult life circumstances that require external assistance. However, in 2013 only 8'573 families were provided with assistance as households with the problem of domestic violence.

7. In May 2012, to increase access for families in crisis, the government introduced a position of social work specialists in all CSSFCY, and hired 12'000 specialists. These professionals offered practical assistance to families in crisis, including women and girls – victims of violence. Unfortunately, the Ministry of Finance of Ukraine suggested eliminating this position and submitted relevant draft resolution to the Cabinet of Ministers of Ukraine No.31-07340-

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[9] As for the protective order, no perpetrator would ever be stopped by a piece of paper that says what he (or she) is prohibited to do. Correction programmes are also ineffective due to the lack of specialists and weak mechanisms for involving perpetrators of violence in such programmes. In addition, the law is quite limited in terms of persons who come within the purview of the law, and it does not answer the question whether this list should be expanded (former spouses, former sexual partners, intimate partners and the like).

[10] In fact, the law contains a number of legal collisions (e.g. discrepancies in terminologies of the Law on Domestic Violence and Family Code in identifying "domestic violence"; no means to prosecute cases against former partner etc.) that further contribute to its inefficiency in terms of protecting victims.

[11] Very serious situations may happen when perpetrators of domestic violence are people with obvious signs of mental disorder or disease,

while law enforcement officers are reluctant to apply measures of compulsory examination and treatment of such persons.

[12] Social services include domestic, information, psychological, social and pedagogical, social and medical, legal and social and economic

services).

14-5/4958 "On Amending the Resolution of the Cabinet of Ministers of Ukraine No.1149 as of December 8, 2010". All specialists are expected to lose their jobs by June 2014. *Women's Consortium of Ukraine* received numerous complaints about heads of some CSSFCY who were pressuring these specialists to resign earlier (upon consent of both parties), which would mean "release" of social benefits guaranteed by labour laws.

8. Other facilities include mother and child centres, rehabilitation centres and shelters for children. However, specialists identify a number of challenges that prevent women from getting services meeting international and European standards of quality from such institutions[13]: limited number of such facilities compared to the existing population and needs[14]; access to facilities based on the certificate of registration of residence[15]; limited age of enrolment to the facility[16]; limited time-frames of accommodation in the facilities[17]; numerous paper-loads for the enrolment[18]; lack of information about such service facilities[19]; and lack of specification[20].

9. **Recommendations:**

- **9.1. Facilitate complaints from victims and ensure that these complaints are thoroughly investigated and prosecuted;**
- **9.2. Allocate adequate funding for the implementation of the Domestic Violence Prevention Act and provide victims with access to effective remedies, psychosocial and legal assistance as well as other relevant services, including sufficient shelters in all parts of the country as needed for victims' counselling and recovery;**
- **9.3. Prosecute and punish perpetrators with dissuasive sanctions;**
- **9.4. Ensure capacity building for law enforcement authorities and medical and social workers to adequately deal with cases of domestic violence, and raise awareness throughout the country on the issue;**
- **9.5. Refrain from eliminating the position of the 12'000 specialists offering practical assistance to families that face domestic violence in centres of social services for family, children and youth (CSSFCY);**
- **9.6. Facilitate effective access to mother and family centres and shelters, remove all barriers, including age limit, limited duration of stay, lack of information, lack of specification and the certificate of registration residence.**

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[13] Materials of the monitoring of shelters for people survived domestic violence and trafficking in humans, 2012-2013, by La Strada Ukraine: http://la-strada.org.ua/ucp_mod_library_view_292.html

[14] For example, in 3 mln capital city Kyiv the number of such institutions are 3 with a total capacity of 53 beds, whilst in 1 mln 300 thousands city of Cherkassy, there is no facilities at all.

[15] The problem of access to such services for people without registration of residence in the region of location of the facility remains a critical issue and leads to the ad-hoc and more complicated arrangement of such cases.

[16] For example, the typical provision of the state centres for social and psychological assistance provides that their services target young people of 18 through 35, while mother and child centers allow the accommodation for women of the child under 1,5 years of age. Such limitations may cause problems to access to services women of other age groups, especially elderly women.

[17] The maximum duration of stay in the facility is set at 3 months, which may be not enough for solving the problem of violence and its sequelae.

[18] In order to have access to a facility, victim survivor has to collect a number of documents that may vary from region to region. The procedure of getting such documents, especially medical, may take time and require for financial resources which survivor do not have.

[19] People are not aware about such facilities and their services and may sometime learn about them only from NGO, National Hotline, or other social partners.

[20] The majority of the facilities is oriented at a broad target population and is not necessarily targeting victims of domestic or other types of violence. In 2008-2010, the correction programs for the offenders were developed and launched. Nevertheless, the level of people involved into this correction work remains low. For instance, in 2013 the number of people registered for committing domestic violence by the police was estimated at 95'204, while only 5'591 of them (5,8%) were referred to correction services.

2. Child Abuse and Neglect

10. According to the analyses by the *Women's Consortium of Ukraine*, 60 per cent of children interviewed consider that the school is the place where they more often face different forms of violence.[21] Children are not always willing to report violence committed by their class-mates, other students in the school or teachers, while investigations of such cases are not effective. Schools do hide such cases for their reputation sake. The level of officially registered crimes committed against children on sexual grounds is also very low[22].

11. However, effectiveness of the response and investigation of sexual as well as other forms of violence against children is very low, while courts do not maintain separate statistics for crimes under Article 153 (Violent unnatural gratification of sexual desire), and Article 154 (Compulsion to sexual intercourse), and in case of perpetration of several crimes the courts register the one that envisages more strict penalties. As a result, many crimes go "unnoticed" in the official court reporting[23]. The situation is further aggravated by concealment of facts by law enforcement agencies that try to reclassify such cases to other misdemeanours, like disorderly conduct or hooliganism. Breaching the law, children could be interrogated without a legal representative. In other cases, kids could pass numerous interrogations by the investigator.

12. The gravest situation is how authorities deal with victims of abuse and neglect. Not only victims have no access to effective remedies but are also stigmatised, marginalised, criminalised, penalised and sometimes held responsible whilst perpetrators enjoy impunity. Furthermore, treated as offenders, they encounter trial even pre-trial detention[24]. As a result, all these cases will continue to be concealed and unsolved, because victims are afraid of repeated violence and humiliation during investigation, while their personal information will be exposed[25].

13. Recommendations:

- **13.1. Ratify the Third Optional Protocol to the Convention on the Rights of the Child and conduct awareness-raising campaign on Article 18 of the Family Code that allows children from 14 years old to seek directly protection from courts;**
- **13.2. Undertake appropriate measures to ensure the incorporation of the Lanzarote Convention in domestic legislation and train law enforcement officers, including on how children victim of abuse and neglect are heard;**
- **13.3. Abstain from criminalising, detaining and socially marginalising children victim of abuse and neglect, and provide them and their family with adequate psychosocial and health services, care, support, and counselling as well as legal assistance and recovery measures;**

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[21] http://wcu-network.org.ua/public/upload/files/schulNAS111.pdf. Furthermore, in 2006, the UN Special Rapporteur on the sale of children, child prostitution and child pornography declared that children from dysfunctional and poor families with a low level of education, street children, victims of sexual abuse and domestic violence, children in institutions or who recently left institutions are exposed to higher risks (See footnote n°3 above). The concern has been echoed five years later by the CRC which was "alarmed at the extent of, and increase in, abuse and neglect of children in all settings (CRC/C/UKR/CO/3-4 (2011), § 50).

[22] For example, in 2012, 90 rapes of children (Article 152 of the Criminal Code of Ukraine) and 487 other types of sexual violence (violent unnatural gratification of sexual desire and compulsion to sexual intercourse) have been reported.

[23] According to the data of human rights NGO "La Strada", only 30% of reports about the fact of rape filed to the police eventually reach courts. Whilst during 2009-2011, law enforcement agencies received more than 7,000 reports and complaints about rape, yet, only 2,071 criminal cases were opened. Even fewer cases actually reached the courtroom. Law enforcement agencies provide no data for 2013. The majority of victims of violence would rather avoid the police, being afraid of retribution from their offenders, biased attitudes and degrading police treatment – as a result, they are deprived of any assistance (http://la-strada.org.ua/ucp_mod_news_list_show_453.html).

[24] UN Doc. CRC/C/OPSC/UKR/CO/1 (2007), §§ 23 & 24.

[25] In addition, child abuse and neglect cases are barely reported and investigated, mostly if they occurred in circles of trust, including families, schools, training centres, paediatric hospitals and rehabilitation institutions. As a result, only very few cases are prosecuted, which ensures impunity for perpetrators. Unfortunately, neither child abuse and neglect systematic desegregated data in circles of trust as well as in specialised educational and rehabilitation centres nor preventive measures to sensitise and support families, are available in Ukraine.

- **13.4. Establish in child special educational and social rehabilitation centres and other circles of trust, a *child protection policy* strictly applicable to all professionals directly or indirectly in contact with children and train them on relevant domestic legislation protecting children against abuse and neglect and sanctions they may face when law provisions and regulations are breached;**
- **13.5. Adopt feasible and measurable preventive measures, including parental and professional enhancing skills for early child abuse and neglect detecting and reporting cases to relevant institutions for investigation and prosecution.**

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* Women's Consortium of Ukraine (WCU) NGO(s) without consultative status, also share the views expressed in this statement.